

Guidance To State Agencies Regarding The Use of Funds Received under the
American Recovery and Reinvestment Act of 2009 (Recovery Act)

FREQUENTLY ASKED QUESTIONS

1) What is the purpose of the Guidance?

As noted in the Guidance, it is intended to provide state agencies with preliminary information on three subjects: (1) requirements for Recovery Act-funded contracts; (2) procurement and contract management related to Recovery Act-funded contracts; and (3) accounting and financial reporting requirements for Recovery Act-funded expenditures.

Section 1 of the Guidance provides draft boilerplate provisions that state agencies must include in all new and existing contracts involving the use of Recovery Act funds.

Section 2 of the Guidance contains information about procurement by the state using Recovery Act funds (Sections 2.3, 2.5, 2.7, 2.9); tips for state agencies on managing Recovery Act funded contracts (Sections 2.1, 2.2, 2.4, 2.12, 2.14); and a summary of provisions in the Recovery Act or state law that state agencies must comply with as a condition of receiving funds available under the Recovery Act (Sections 2.6, 2.7, 2.8, 2.11, 2.13, 2.15, 2.16).

Section 3 of the Guidance describes how the state must account for and report on Recovery Act funds separate from other federal and state funds.

2) Section 1 sets forth provisions that must be included in every contract using Recovery Act funds. Does Section I apply to grants and loans? What if these provisions don't seem to fit in the context of the particular type of agreements used by my agency for these funds?

Section 1 describes standard provisions that must be included in all contractual arrangements, including grants, loans, and professional services agreements, entered into by the state involving the use of Recovery Act funds. Many of the provisions reflect statutory requirements under the Recovery Act or state law.

Certain of these provisions, however, may not need to be included in every type of contractual arrangement. For example, the Buy American provision described in Section 1.2 of the Guidance (Section 1605 of the Recovery Act), only applies to the purchase of "iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of a public building or

public work” funded in whole or in part by funds made available under the Recovery Act. Consequently, this provision may not need to be included in a contract that does not involve the construction, alteration, maintenance or repair of a public building or public work. Those individuals at your agency responsible for drafting agreements involving the use of Recovery Act funds are encouraged to work with legal counsel to determine the applicability of these provisions to a particular contractual arrangement.

Lastly, these provisions may not fit smoothly into your existing contracts; consequently, some revision may be required. For example, your contracts may refer to a party as “grantee” or “contractor”, rather than “Recipient.” Agencies may revise the Recovery Act provisions included in Section 1 of the Guidance to make them consistent with existing contract terms.

3) My agency purchases items through delegated authority or is otherwise not subject to the Department of Management and Budget’s procurement rules. Does this Guidance apply to my agency?

The Guidance provides information applicable to Recovery Act funds; consequently, all agencies that receive Recovery Act funds must comply with requirements outlined in the Guidance.

For agencies that purchase items through delegated authority, please note that there will be no delegated authority for Recovery Act-funded purchases by state agencies (see Section 2.3 of the Guidance). As noted in Section 2.3 of the Guidance, however, this restriction does not apply to those contract types that are currently handled by the agency through statutory authority or Administrative Guide delegation (i.e. grants, direct human services, medical services, construction, MDOT, DNR leases, etc.).

4) Section 1.1 of the Guidance directs state agencies to include a “Buy Michigan Preference” in its contracts and references Section 261 of The Management and Budget Act, 1984 PA 431, MCL 18.1261. This section of the Michigan Compiled Laws only applies to state purchases. What does this mean for my contractors who are seeking to purchase goods or services using Recovery Act funds?

In order to maximize the economic benefit realized in this state as a result of Recovery Act funds, the Guidance includes a “Buy Michigan Preference” provision in “Section 1 – Contract and Grant Terms and Requirements.” This “Buy Michigan Preference” should be included in any contracts funded in whole or in part with funds available under the Recovery Act that may involve the procurement of goods and services.

Under Section 1554 of the Recovery Act and Section 1.15 of the Guidance, all contracts for goods and services, to the maximum extent possible, should be awarded as “fixed price contracts through the use of competitive procedures.” Contractors seeking to purchase goods or services using Recovery Act funds must comply with this requirement. In addition, under the “Buy Michigan Preference,” contractors should award contracts to Michigan businesses “if all other things [i.e. price, quality, and any other evaluation criteria used by the contractor to evaluate bidders] are equal” and if doing so is consistent with federal law. Section 268 of The Management and Budget Act, 1984 PA 431, MCL 18.1268, sets forth the criteria that a bidder for a state contract must meet in order to be considered a Michigan business for purposes of the “Buy Michigan Preference.”

5) We already post whistleblower protection notices at our agency, as required under state law. Isn't that enough?

The Recovery Act contains whistleblower protections specific to uses of Recovery Act funds. These protections are *in addition* to protections that are already in place under state and federal law.

The Recovery Act requires that all recipients of Recovery Act funds (including state agencies) post notice of the Recovery Act's whistleblower protections. Your contractors, grantees, debtors, etc., and any of their sub-recipients also must post a notice describing the Recovery Act-specific whistleblower protections if they receive Recovery Act funds.

The Michigan Recovery Office and the Office of the State Employer have developed a whistleblower protection notice for posting in compliance with the Recovery Act. This notice will be circulated to agency human resources departments soon.

6) Section 1.5 requires that all “contract solicitations” funded in whole or in part with Recovery Act funds be posted on www.bid4michigan.com. Does this mean that I have to post requests for proposals for grants at this site too?

No. This requirement applies to procurement bids (i.e. solicitations for the purchase of goods and services). Agencies may choose to post requests for proposals and invitations to bid for grants or loans funded in whole or in part under the Recovery Act on www.bid4michigan.com; or they may continue to use existing procedures for making these solicitations available to the public.

Any public solicitation for bids/proposals should include a link to the Michigan Economic Recovery website, www.michigan.gov/recovery. Alternatively, these competitive bid solicitations can be posted on the Michigan Economic Recovery website.

7) Section 1.6 addresses state reporting requirements. How does this apply to my contractors, grantees or debtors under Recovery Act-funded contracts?

Under Section 1512 of the Recovery Act, the state is required to report certain information about its expenditures of Recovery Act funds to the federal government. To meet this reporting requirement, state agencies need to gather some information from their contractors, grantees or debtors that receive funds made available under the Recovery Act.

Consequently, state agencies should include language in Recovery Act-funded contracts that requires any recipient of Recovery Act funds to provide the agency with the information needed for the state to comply with the reporting requirement contained in Section 1512 of the Recovery Act. Those persons at your agency who are responsible for drafting contracts involving Recovery Act funds should work with legal counsel to determine the best way to achieve this purpose in their Recovery Act-funded contracts.

8) Section 1 of the Guidance requires state agencies to include language in Recovery Act-funded contracts requiring recipients to include the Michigan Recovery logo on all signage or other publications in connection with the activities funded by the state of Michigan. Where can I get a copy of the Michigan Recovery Logo?

Please contact Beth Bingham at the Michigan Recovery Office, 3-0200, to obtain a copy of the logo.

9) Section 1.17 of the Guidance requires recipients of Recovery Act funds to post notice of job opportunities created in connection with Recovery Act funds in the Michigan Talent Bank, www.michworks.org/mtb. Why is this included in the Guidance?

The federal Office of Management and Budget published guidance on April 3, 2009 that encourages the “listing of all jobs generated through the Recovery Act on . . . State Job Banks.” Section 1.17 of the Guidance is intended to comply with this federal guidance. This provision does not require employers to use the michworks.org website to the exclusion of other methods of identifying potential employees, or to hire an applicant identified through that website. Rather, Section 1.17 serves to include the state job bank as one

of any number of means an employer may use to solicit applicants for employment opportunities.

Michworks.org is a free resource that serves employers and job seekers to ensure that employers have the skilled workers they need and workers have access to information about good job opportunities that provide economic self-sufficiency. By directing recipients of Recovery Act funds to use michworks.org to post information about job opportunities arising from Recovery Act funded projects, the state is able to provide a centralized database where job seekers and other interested persons can find information about job opportunities created with Recovery Act funds. A link to michworks.org is on the federal recovery site, www.recovery.gov, and the Michigan Economic Recovery site, www.michigan.gov/recovery.

10) Section 2.4 of the Guidance references “[a]gency appointed Contract Compliance Inspectors.” If my agency does not have such a position, must one be created?

No. Agencies are not required to create the position of “Contract Compliance Inspector.” The term “Contract Compliance Inspector” simply refers to the employee(s) designated by the agency to monitor a contract during its term. The designated employee(s) may be referred to in any number of ways, including, but not limited to, “contract manager,” “grant manager,” or “grant administrator.”

11) Section 2.10 of the Guidance provides that agencies should forward all Requests for Proposals, Invitations to Bid, or similar solicitations to the Michigan Economic Recovery Office. Does this directive include procurement solicitations?

No. This requirement only applies to non-procurement competitive bid solicitations (i.e. competitive solicitations in connection with grants or loans funded in whole or in part with funds available under the Recovery Act).

Nonetheless, agencies are encouraged to seek input from the Michigan Recovery Office on any agency activities involving the use of Recovery Act funds.

12) Some state agencies have a page on their website dedicated to information on the Recovery Act. Should all agencies dedicate space on their websites to such information?

Agencies are encouraged, but not required, to dedicate space on their webpages for information regarding the Recovery Act and their Recovery Act-

related projects/funding. These webpages should include the Michigan Recovery logo and a link to the Michigan Recovery website, www.michigan.gov/recovery. Contact the Michigan Recovery Office for more information about the inclusion of Recovery Act information on agency websites.

If you have questions about the Guidance not otherwise addressed in this document or would like to provide input on the Guidance or this document, please feel free to contact the Michigan Economic Recovery Office, 517-373-0200.